

1  
2  
3  
4  
5  
6 **UNITED STATES DISTRICT COURT**  
7 **DISTRICT OF NEVADA**  
8

9 SHERRIE STEVENS,  
10

11 Petitioner,  
12

13 vs.  
14

15 N.D.O.C., *et al.*,  
16

17 Respondents.  
18

Case No. 2:15-cv-00761-GMN-NJK

**ORDER**

19 This action is a *pro se* petition for a writ of habeas corpus filed pursuant to 28 U.S.C. § 2254  
20 by a Nevada state prisoner.

21 The Court conducted a preliminary review of the federal petition pursuant to Rule 4 of the  
22 Rules Governing Section 2254 Cases in the United States District Courts. The Court must dismiss a  
23 petition “[i]f it plainly appears from the petition and any attached exhibits that the petitioner is not  
24 entitled to relief in the district court.” Rule 4 of the Rules Governing Section 2254 Cases; *see also*  
25 *Hendricks v. Vasquez*, 908 F.2d 490 (9<sup>th</sup> Cir. 1990). Because the claims in the petition appeared to  
26 be unexhausted, on November 23, 2015, the Court issued an order requiring petitioner to file a  
27 response demonstrating that the federal claims were exhausted in the Nevada state courts. (ECF No.  
28 5). On December 22, 2015, petitioner filed a memorandum of points and authorities. (ECF No. 8).  
The Court notes that petitioner’s memorandum does not address the exhaustion of her federal  
claims, but rather, provides additional factual details in support of her claims. On December 30,  
2015, respondents filed a response to petitioner’s memorandum, exhibits consisting of the state

1 court record pertaining to exhaustion, and a motion for leave to file petitioner's presentence report  
2 under seal. (ECF Nos. 9, 10, 11).

3 A federal court will not review a state prisoner's petition for habeas relief until the prisoner  
4 has exhausted available state remedies for all claims raised. *Rose v. Lundy*, 455 U.S. 509 (1982); 28  
5 U.S.C. § 2254(b). In the instant case, the federal petition contains three grounds alleging ineffective  
6 assistance of trial counsel. Petitioner brought a post-conviction habeas petition in the state district  
7 court containing the ineffective assistance of counsel claims, but petitioner did not appeal the denial  
8 of her petition to the Nevada Supreme Court. (Exhibits 2, 3).<sup>1</sup> Instead, petitioner filed an original  
9 petition with the Nevada Supreme Court. (Exhibit 5). The Nevada Supreme Court declined to  
10 exercise original jurisdiction and thus did not address the merits of any claims contained in that  
11 petition. (Exhibit 6). A claim is not exhausted if it is presented for the first time in a procedural  
12 context in which the merits will not be considered absent extraordinary circumstances. *Castille v.*  
13 *Peoples*, 489 U.S. 346, 349-52 (1989). The claims in petitioner's federal petition were not properly  
14 exhausted in the Nevada state courts. The federal petition is dismissed without prejudice.

15 Lastly, respondents seek to file petitioner's presentence investigation report (Exhibit 5A)  
16 under seal because it contains confidential information. (ECF No. 11). Respondents have made an  
17 adequate showing of compelling reasons to keep petitioner's presentence report sealed. *See*  
18 *Kamakana v. City and County of Honolulu*, 447 F.3d 1172, 1178-89 (9<sup>th</sup> Cir. 2006). Accordingly,  
19 the Court grants respondents' motion to seal the presentence report (Exhibit 5A, at ECF No. 10).

20 **IT IS THEREFORE ORDERED** that respondents' motion to seal (ECF No. 11) the  
21 presentence report is **GRANTED**. The Clerk of Court shall keep the presentence report (Exhibit 5A  
22 of ECF No. 10) under seal.

23 **IT IS FURTHER ORDERED** that this action is **DISMISSED WITHOUT PREJUDICE**  
24 for failure to exhaust state court remedies. If and when petitioner properly exhausts her state court  
25 remedies, she may file a new habeas petition in a new action.

---

26  
27 <sup>1</sup> The exhibits referenced in this order are found in the Court's record at ECF No. 10.  
28

**IT IS FURTHER ORDERED** that petitioner is **DENIED** a certificate of appealability.

Dated this 29 day of June, 2016.